

Hon. Ronald B. Leighton

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

DAVID KING and RHONDA KING,  
husband and wife,

Plaintiffs,

vs.

KALAMA SCHOOL DISTRICT NO. 402,  
JAMES SUTTON,

Defendant.

No. C05-5675KLS

REVISED PROPOSED ORDER  
CONCERNING DEFENDANTS'  
MOTIONS IN LIMINE

Note for Motion Calendar:

This court, having heard Defendants Kalama School District's and Sutton's Motions in Limine, having heard the arguments of counsel and having considered the law and the evidence, hereby ORDERS, ADJUDGES, AND DECREES as follows:

Motion in Limine	Granted	Denied	Reserved
1. <b>No Mention of Settlement Discussions:</b> No person should be allowed to mention, testify about, allude to or offer into evidence any testimony or exhibits which relate to settlement demands, offers, or negotiations, or the content of any such discussions in this lawsuit.	X		
2. <b>Exhibit Protocol:</b> Before showing any exhibit to the jury, the attorney offering that exhibit should have the exhibit either admitted into evidence or approved for showing by the Court.	X		
3. <b>No Mention of Insurance:</b> No person should be allowed to mention, testify about, allude to or offer into evidence any exhibits which relate to anything regarding	X		

(1010846.DOC)

- 1 - Proposed Order Concerning Motions in Limine  
C05-5675KLS  
1010846

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1	liability insurance or self insurance.			
2	4. <b>Law Firms:</b> No person should be allowed to			
3	mention, testify about, allude to or offer into evidence any			X
4	exhibits which relate to how the parties obtained			
5	representation of counsel in this case.			
6	5. <b>No Mention of Litigation Expenses:</b> No person	X		
7	should be allowed to mention, testify about, allude to or offer			
8	into evidence any exhibits which relate to anything regarding			
9	litigation expenses incurred by the parties.			
10	6. <b>Exclusion of Witnesses:</b> All non-party witnesses	X		
11	should be excluded from the courtroom while other witnesses			
12	are testifying pursuant to Fed. R. Evid. 615.			
13	7. <b>One Day Notice for Calling Witnesses:</b> As a			
14	courtesy, attorneys for both sides should give one another			
15	notice of witnesses, depositions to be read, and exhibits to	X		
16	offered or used at trial the following day of trial. Such notice			
17	should be given, at the very least, when Court recesses the			
18	Court day prior to the testimony, deposition or exhibit being			
19	offered.			
20	8. <b>No Mention of These Motions:</b> No one should	X		
21	mention, allude to or discuss in the presence of the jury any			
22	of these motions, rulings on these motions, or anything about			
23	these motions.			
24	9. <b>Witnesses Must Read Orders Relating to All</b>		X	
25	<b>Motions in Limine:</b> Before any witness testifies, the			
	attorney bringing the witness to the witness stand must			
	provide the witness with a copy of the orders this Court			
	issued relating to motions in limine in this case, and the			
	witness should read those orders so that he/she is familiar			
	with them before testifying.			
	10. <b>No Per Diem Argument Regarding Pain and</b>		X	
	<b>Suffering:</b> Plaintiffs and their attorneys should not be			
	allowed to make any argument in front of the jury, or make			
	any comment, ask any question, or make any allusion to the			
	per diem value of plaintiff's alleged pain and suffering in this			
	case.			
	11. <b>There Should Be No "Place Yourself in the Place</b>	X		
	<b>of Plaintiffs" Argument.</b>			
	12. <b>There Should Be No Argument Concerning</b>	X		
	<b>Plaintiffs Having to Share the Proceeds of Any Award</b>			
	<b>With Their Attorneys.</b>			

1	13. <b>There Should Be No Argument Regarding Alleged Financial Inequality Between Plaintiffs and Defendants.</b>	X		
2	14. <b>Plaintiff Should Not Offer Evidence of Alleged Wrongdoing From Before September 29, 2002:</b> Plaintiffs,			
3	their witnesses, and attorneys should not be allowed to			X
4	discuss any alleged wrongdoing of any Defendant which			
5	occurred before September 29, 2002.			
6	15. <b>Plaintiff Should Not Be Allowed to Call Any Expert or Lay Witness Not Previously Identified By Plaintiff, nor Offer Any Real Evidence Not Properly Disclosed in Discovery.</b>			X
7	16. <b>Only Qualified Experts May Testify Regarding Causation:</b> No lay witness or attorney should be allowed to			
8	opine what caused a particular injury or damage which			X
9	plaintiff David King is alleged to have suffered. Only			
10	properly qualified experts should be allowed to testify that			
11	any actions of a Defendant caused the damages alleged in this case.			
12	17. <b>Motion in Limine to Strike Steven Lewis, D.C. as a Witness:</b> Plaintiff David King's chiropractor, Steven Lewis,			
13	D.C., should not be allowed to testify at trial because he is			X
14	unable to testify with reasonable medical probability as to			
15	what has caused any condition which plaintiff complains of in this case.			
16	18. <b>Motion in Limine to Strike James Boylon, M.D. as a Witness:</b> Plaintiff David King's dermatologist, James			
17	Boylon, M.D., should not be allowed to testify because he is			X
18	unable to testify with reasonable medical probability either as			
19	to what has caused any skin condition which plaintiff			
20	complains of in this case, or as to what degree the stress Mr.			
21	King has experienced at work may have contributed to that			
22	skin condition.			
23	19. <b>References to Dr. Hegyvary:</b> Plaintiffs, their			
24	attorneys, and witnesses should not be allowed to refer to the			X
25	IME psychiatrist, Csaba Hegyvary, M.D., as "the defense			
	doctor," nor should they be allowed to refer to that IME as			
	"the defense exam."			
	20. <b>Plaintiffs Should Not Be Allowed to Allege "Prior Bad Acts" by Mr. Sutton:</b> Plaintiffs should not be present			
	testimony of any witness concerning prior bad acts of			X
	Superintendent Sutton before he came to work for the			
	Kalama School District in 1997.			

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21. **No Witness Should Be Allowed to Testify as to the Ultimate Legal Conclusion of Law that a Defendant Has "Retaliated" Against Them or Another Individual:** Neither plaintiffs nor their witnesses should be allowed to opine whether they have been "retaliated" against or whether someone else has been retaliated against. Instead of conclusory testimony, witnesses should describe factually what has happened without opining as to whether there was retaliation.

X

22. **No Witness Should Be Allowed to Testify that a Defendant Has "Harassed" or "Discriminated Against" Them or Another Individual:** Neither plaintiffs nor their witnesses should be allowed to state an opinion that they have been "harassed" or "discriminated against" by any Defendant, or whether someone else has been harassed or discriminated against. Instead of conclusory testimony, witnesses should describe factually what has happened without opining as to whether they was harassed or discriminated against.

X

23. **Plaintiff David King Should Not Offer His Own Diagnoses or Prognoses:** Plaintiff should not be allowed to testify, nor should his attorney question him concerning, what the diagnoses of his various medical or psychological conditions are, nor should he be allowed to testify as to what his doctors have told him the diagnoses of those conditions are.

X

24. **Plaintiff David King Should Not Offer His Own Medical Causation Opinions:** Plaintiff David King should not be allowed to testify, nor should his attorney question him concerning as to what the causes of his various medical and psychological conditions are, nor should he be allowed to testify as to what his doctors have told him the causes of those conditions are.

X

25. **Plaintiffs Should Not Be Allowed to Testify Concerning Any Chart or Calculations Unless Proper Foundation Has Been Laid.**

X

26. **Mr. King Should Not Be Allowed to Testify As to What Others May Have Understood the Term "Staffing" To Mean.**

X

1	27. Mr. King Should Not Be Allowed to Testify As to			
2	Any Unwritten Custom or Policy of the District:			
3	Plaintiffs and their witnesses should not be allowed to testify			X
4	as to any unwritten customs or policies of the Kalama School			
5	District.			
6	28. Mr. King Should Not Be Allowed to Testify		X	
7	Concerning the Emotional Distress of Litigation.			
8	29. Mr. King Should Not Be Allowed to Testify as to	X		
9	Discipline Allegedly Received by Other Teachers Without			
10	First Laying Foundation that He Has First Hand			
11	Knowledge.			
12	<b>Supplemental Motions in Limine</b>			
13	30. Plaintiffs Exhibits 2-16 and 24-26 are inadmissible and			X
14	are stricken from plaintiffs' exhibit list.			
15	31. Plaintiffs' Exhibits 2-16 are inadmissible and are			X
16	stricken from plaintiff's exhibit list.			
17	32. Plaintiffs Should Not Complain About Mr. Sutton		X	
18	Allegedly Threatening to Terminate Mr. King.			
19	33. Plaintiffs Should Be Precluded from Alleging Any			X
20	"Union Activities" Other Than Those in Response to			
21	Interrogatory Number 3.			
22	34. Plaintiff Should Not Be Allowed to Offer Evidence of			X
23	"Retaliation" Other Than That Identified In Response to			
24	Interrogatory Number 5.			
25	35. Plaintiffs Should Not Be Allowed to Offer Evidence			X
	of Damages Other Than That Identified In Response to			
	Interrogatory Number 7.			
	36. Plaintiffs Should Not Be Allowed to Offer Evidence			X
	of RCW 41.56 Violation Other Than That Identified In			
	Response to Interrogatory Number 11.			
	37. Plaintiffs Should Not Be Allowed to Offer Evidence			X
	of RCW 41.56 Violation Other Than That Identified In			
	Response to Interrogatory Number 13.			
	38. Plaintiffs Should Not Be Allowed to Offer Evidence			X
	of Employment Discrimination Violation Other Than			
	That Identified In Response to Interrogatory Number 15.			
	39. Plaintiffs Should Not Be Allowed to Offer Evidence			X
	of Special Damages Other Than That Identified In			
	Response to Interrogatory Number 1.			
	40. Plaintiffs' Exhibits 27 and 28 Should Be Stricken			
	Since They Have Not Been Properly Identified.			

1 41. Plaintiffs' Should Be Required to Declare Who Their  
 2 Witnesses Will Be In This Case.

X

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3 DONE IN OPEN COURT this 11<sup>th</sup> day of December 2006.

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 5   
 6 Hon. Ronald B. Leighton

7 Presented by:

8 LEE SMART COOK MARTIN &  
 9 PATTERSON, P.S., INC.

10 By: /s/ Donald F. Austin

11 Michael A. Patterson, WSBA No. 7996  
 12 Duncan K. Fobes, WSBA No. 14964  
 13 Donald F. Austin, WSBA No. 35293  
 Attorneys for Defendants Kalama School  
 District and Sutton

14 Approved as to Form; Notice of  
 15 Presentation Waived:

16 CRANDALL, O'NEILL & McREARY, P.S.

17  
 18 By \_\_\_\_\_,  
 19 \_\_\_\_\_, WSBA No. \_\_\_\_\_  
 Attorneys for Plaintiffs